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UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL D. LOCKWOOD and  
ALGONQUIN CAPITAL MANAGEMENT, LLC,  
A Connecticut Limited Liability Company,

Civil Action Number: 07-cv-7524  
(HB)

Plaintiff,

- against -

JOSEPH MACEDA,

Defendant.

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**RULE 56.1 STATEMENT OF UNDISPUTED MATERIAL FACTS  
BY DEFENDANT, JOSEPH MACEDA**

Defendant, JOSEPH MACEDA, respectfully submits this Statement of Undisputed Facts in support of Defendant's Cross-Motion for Summary Judgment and in Response to Plaintiff's Rule 56.1 Statement:

1. On March 5, 2001, JOSEPH MACEDA, executed a purported guaranty to "induce the acceptance of the within note (hereinafter "the Note") by Ocean Power Corporation" and not to induce Michael Lockwood to accept the Note. See, Exhibit "1".
2. The purported Guaranty was signed by JOSEPH MACEDA in his capacity as "President" of Ocean Power Corporation. See, Exhibit "3".
3. That the purported Guaranty, guarantees payment to Ocean Power Corporation (hereinafter "OPC") and not to the Plaintiffs. See, Exhibit "3".
4. That the Note of March 5, 2001 was secured and collateralized by all of the assets of OPC by virtue of a Security Agreement which gave the Plaintiff, Lockwood a

"first priority lien on and security interest in all of the Debtor's assets." See, Exhibit "4".

5. That on December 1, 2002, JOSEPH MACEDA resigned as President and Member of the Board of Directors of OPC.

6. That on December 2, 2002 (hereinafter "the Petition Date"), OPC filed a petition for relief under Chapter 11 of the United States Bankruptcy Code (hereinafter "Bankruptcy Code").

7. That as of the Petition Date, Plaintiff held certain promissory notes that were not purportedly guaranteed by JOSEH MACEDA dated August 16, 2002, August 23, 2002, August 29, 2002, and September 19, 2002, in which there was due and owing approximately \$620,000. See, Exhibit "1 at Page 9".

8. That upon Plaintiff's Motion and with Plaintiff's consent, the Plaintiff was credited the sum of TWO MILLION (\$2,000,000.00) DOLLARS in the Bankruptcy Court and credited that payment to the Notes set forth in Paragraph 7 above before giving any credit to the Note of OPC which was purportedly guaranteed by the Defendant, (See, Plaintiff's 56.1 Statement at Paragraph 17).

9. Upon the credit of \$2,000,000.00 as set forth in Paragraph 8 above, the Plaintiff received all of the assets of OPC that were collateralized by the Note which is the subject of this action.

10. That after such credit, the remaining balance on the Note which is the subject of this action was deemed unsecured.

11. That after such credit, the Plaintiff released OPC from any further liability and the debt was discharged in bankruptcy.

12. That the Plaintiff, in applying the credit of \$2,000,000.00 to the Notes, as set forth in Paragraph 7 above, impaired the collateral security on the Note which is the subject of this action to the purported guarantor's prejudice.

13. The Defendant JOSEPH MACEDA was not given notice of the bankruptcy sale, as purported guarantor, and the sale to Plaintiff was not commercially reasonable and far below fair market value.

Dated: February , 2008

Respectfully submitted,

**WHITE, CIRRITO & NALLY, LLP**

By:

  
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